

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

March 25, 2011

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on March 25, 2011. Members present were Chairman Louis Stout, Janice Meyer, Noel White, James Griggs and Kathryn Moore. Member Thomas Glover arrived at 1:23 p.m. Member Barry Stumbo was absent. Others present were Jim Hume, George Dillon and Mark Newberg, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Law Department. Staff members in attendance were Bill Saltee, Jim Marx and Wanda Howard.

At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

- II. **APPROVAL OF MINUTES** - The Chairman announced that there were no minutes to be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **V-2011-21: JOHN L. FOLEY** - appeals for variances to: 1) reduce the required front setback along Ashton Drive from 20 feet to 12 feet; and 2) eliminate a portion of the required landscape buffer for the parking lot and circulation drive in order to construct a new commercial building in a Highway Service Business (B-3) zone, on property located at 1260 Winchester Road. (Council District 1)

The Staff Recommends: Postponement, for the following reasons:

1. The circle drive feature that is intended to serve the small commercial building that is proposed has not been designed to safely accommodate the maneuvering needs of a box-type delivery truck of 30' in length. Additional time is needed to determine if the design of the circle drive can be revised, in conjunction with a reduction in width and/or configuration of the building, to satisfy the requirement of the Zoning Ordinance that aisles and access drives be designed to provide adequate maneuvering area on site, with no backing onto or maneuvering within the street right-of-way.
2. The possibility of trucks having to access the property as they are traveling north on Ashton Drive, and the potential impact of that on the adjoining and nearby residential properties, needs to be further evaluated, and may influence the extent of any design revisions needed for the circle drive.
3. More detailed information regarding the possible uses of the building is needed, so that projections can be made regarding the types of trucks that are reasonably anticipated to need access to the site, and the frequency that different types and sizes of trucks might be coming to the site.

Mr. Marx told the Board that a letter was received from the appellant requesting a one-month postponement, in concurrence with the staff's recommendation.

Action – A motion was made by Ms. White, seconded by Ms. Meyer, and carried unanimously (Stumbo, Glover absent) to postpone **V-2011-21: JOHN L. FOLEY** until the April 29 meeting.

- b. **V-2011-23: LEXINGTON LAND COMPANY, LLC** - appeals for a variance to increase the maximum allowable floor area ratio from .35 to .50 for conversion of a multi-family building into a duplex and construction of an addition in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 331 Aylesford Place. (Council District 3)

The Staff Recommends: Postponement, for the following reasons:

1. Additional details are needed regarding the location and extent of the expansion that is proposed as part of the conversion of the multi-family building on the subject property into a duplex.
2. Information is needed pertaining to the number of bedrooms and number of occupants in the 4-unit building, and how that arrangement will change if the building is converted into only two dwelling units (a duplex).

With regard to the staff's recommendation for a postponement, Mr. Marx stated that the applicant wished to proceed with consideration of this variance appeal.

- c. **A-2011-19: DEREK VAUGHAN** - appeals for an administrative review to determine that a catering business is permitted in the Wholesale and Warehouse Business (B-4) zone, as either a wholesale establishment or as a shop of special trade, on property located at 218 Jefferson Street. (Council District 1)

Mr. Marx said there were no findings for approval, as the appellant had withdrawn this appeal.

2. **No Discussion Items** - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
  - a. **V-2011-20: JOHN and LINDA THOMPSON** - appeal for a variance to reduce the required front setback from 30 feet to 25.5 feet for a room addition, in a Single Family Residential (R-1C) zone, on property located at 2293 Shannawood Drive. (Council District 10)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The building addition will only extend less than five feet beyond the 30' building line, and will be just six inches closer to the street than the westerly wing of the existing dwelling.
- b. The alignment of the existing building relative to the platted 30' building line, with an irregular front building wall, is a special circumstance that contributes to justifying the limited variance that has been requested.
- c. Strict application of the Zoning Ordinance would prevent a reasonably sized addition intended to provide an easily accessible bedroom and bath on the first floor of the residence. Since the scope of the variance is so limited, and the purpose so strongly tied to a legitimate "aging in place" need, such a restriction could easily be considered as unreasonable and a potential hardship.
- d. Although the need for a variance is due to the prior averaging of the required 30' front yard, it is important to recognize that the original layout of the home on this lot was intended to preserve as many trees as possible, and will continue to do so with the proposed one-story addition.

This recommendation of approval is made subject to the following conditions:

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. and Mrs. John Thompson, appellants, were present. They indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. White, seconded by Mr. Griggs, and carried unanimously (Stumbo, Glover absent) to approve **V-2011-20: JOHN and LINDA THOMPSON** (a variance to reduce the required front setback from 30 feet to 25.5 feet for a room addition in a Single-Family

Residential [R-1C] zone on property located at 2293 Shannawood Drive) as recommended by the staff, and subject to the two conditions.

- b. **V-2011-22: BELINDA DOTY** - appeals for a variance to reduce the required width of a perimeter landscape buffer from 15 feet to 10 feet, and alter the type of plantings required within that buffer, in order to establish a retail shop in a Neighborhood Business (B-1) zone, on property located at 2011 Rainbow Road. (Council District 10)

The Staff Recommends: Approval of the requested landscaping variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, and should help to maintain the character of the neighborhood. A buffer width reduction from 15' to 10' will eliminate the need to erect a fence at an undesirable location that might adversely affect the use of the driveway on the adjoining property, and might also result in the small business on the subject property appearing separate from, rather than blended with, the surrounding residential uses.
- b. The prior use of the subject property for a residential purpose, and location of the former dwelling 10' from the southerly side property line, are special circumstances that contribute to justifying a buffer width reduction.
- c. Strict application of the Zoning Ordinance would force the appellant to place a fence along the southerly side property line, where such a structure would not be beneficial for buffering purposes given the small size of the business and historical use of the property.
- d. The circumstances surrounding this variance request have arisen largely as a result of the appellant's efforts to convert a nonconforming residential use into a conforming business use, with the goal of blending the business with the surrounding neighborhood to the maximum extent possible.

This recommendation of approval is made subject to the following conditions:

1. The property shall be landscaped in accordance with the submitted application and revised site plan indicating (a) the provision of continuous plantings (staggered if desired) of at least 3' in height along the southwesterly edge of the parking lot, and (b) the provision of at least one small tree or cluster of shrubs at the easterly end of the 7' wide strip of open space at the front of the property. Adjustments to these requirements for sight distance purposes are acceptable, as deemed necessary by the Division of Building Inspection or the Division of Traffic Engineering.
2. A detailed landscaping plan reflecting the above shall be presented to and approved by the Division of Building Inspection, and implemented prior to obtaining a final occupancy permit for a business use at this location.
3. The granted variance does not pertain in any way to signage that is proposed for the subject property, nor does it reflect in any way an approval of any signage or signage location depicted on the currently submitted site plan.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, no photos of the subject property were presented.

Representation – Ms. Belinda Doty, appellant, was present. She indicated that she had reviewed the conditions and agreed to abide by them.

Mr. Griggs said, after the Landscape Review Committee meeting, there was a brief discussion regarding the proposed sign location. He noted that Ms. Doty would need to secure a permit prior to installing the sign on the property. Ms. Doty indicated that she intended to come back to the Board next month with an appeal for the signage in question.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously (Stumbo, Glover absent) to approve **V-2011-22: BELINDA DOTY** (a variance to reduce the required width of a perimeter landscape buffer from 15 feet to 10 feet, and alter the type of plantings required within that buffer, in order to establish a retail shop in a Neighborhood Business [B-1] zone on property located at 2011 Rainbow Road) as recommended by the staff and subject to the three conditions.

- c. **CV-2011-18: C.L. REDMOND** - appeals for a conditional use permit to add a pavilion to an existing garden center; and a variance to reduce the required 300-foot setback from a residential structure to 180 feet in an Agricultural Urban (A-U) zone, on property located at 4432 Old Nicholasville Road. (Council District 9)

The Staff Recommends: Approval of a conditional use permit, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This garden center is a well established use at this location, and there is no aspect of the construction or use of the pavilion that is anticipated to be disturbing to area residents.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of the requested variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The pavilion will cover a portion of an existing outdoor sales area, and will be sited further away from nearby residential structures than the existing store and office building.
- b. The manner in which this garden center has developed over the years, in close proximity to several residences, is a special circumstance that contributes to justifying the requested variance. The site selected for the pavilion is reasonable and should complement other existing site improvements.
- c. Strict application of the Zoning Ordinance would result in the pavilion having to be placed at an undesirable location that would negatively impact the arrangement of other improvements.
- d. The circumstances surrounding this variance request are not the result of actions taken by the appellant, as many improvements and the general arrangement of facilities were already in place when the property was purchased in 2002.

This recommendation of approval is made subject to the following conditions:

1. The pavilion shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Richard Murphy, attorney, was present representing the appellant, who was in attendance along with his family. Mr. Murphy said they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Stumbo, Glover absent) to approve **CV-2011-18: C. L. REDMOND** (a conditional use permit to add a pavilion to an existing garden center; and a variance to reduce the required 300-foot setback from a residential structure to 180 feet in an Agricultural-Urban [A-U] zone on property located at 4432 Old Nicholasville Road) as recommended by staff and subject to the two conditions.

- d. **C-2011-16: SETH D. TUSKA** - appeals for a conditional use permit to establish an historic house museum in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 147 Old Park Avenue. (Council District 3)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A historic house museum designation will further recognition of a prominent local artist, and a significant historic structure will be preserved and renovated for a beneficial public use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The historic house museum shall be established in accordance with the submitted application, and a revised site plan indicating that the rear parking area is to remain as is.

Improvements to that off-street parking area are acceptable, provided they are designed in accordance with the requirements of the Division of Traffic Engineering and the Division of Historic Preservation.

2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the museum.
3. Use of the rear parking area shall be limited to residents of the building and museum staff, with museum visitors directed to use on-street parking or designated off-street parking lots with shared parking agreements. Should management of this parking arrangement become problematic, with frequent use of the on-site parking area by museum visitors creating a public safety hazard, the appellant shall pursue the use of signage and/or gating the access, as determined to be most appropriate by the Division of Traffic Engineering.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

At this time, Mr. Griggs announced that he would be disqualifying himself from this case because he was a personal friend of the applicant.

Representation – Mr. Seth Tuska was present. He stated that he had read the conditions for approval and agreed to abide by them.

Action – A motion was made by Ms. White, seconded by Ms. Meyer, and carried unanimously (Stumbo, Glover absent; Griggs recused) to approve **C-2011-16: SETH D. TUSKA** (a conditional use permit to establish an historic house museum in a Planned Neighborhood Residential/Historic District Overlay [R-3/H-1] zone on property located at 147 Old Park Avenue) as recommended by staff and subject to the three conditions.

- e. **C-2011-17: GEORGE P. CRAWLEY** - appeals for a conditional use permit to allow continued operation of a golf driving range under new management in the Agricultural Rural (A-R) zone, on property located at 4400/4440 Athens-Boonesboro Road. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A driving range has been in place at this location for many years, with no indications of any significant disturbances to the surrounding rural properties. Minor expansions to this use (involving putting greens and sand trap improvements) have not been noticeable in the past to area property owners to the point that complaints have been lodged.
- b. Lighting and signage are currently controlled for this use, and will continue to be so in the future.
- c. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The driving range shall be operated in accordance with the existing application and site plan, but the site plan is to be revised to identify all existing off-street parking areas, sand traps and putting greens on the subject property.
2. An occupancy permit shall be obtained from the Division of Building Inspection within 60 days of action by the Board, following required revisions to the current site plan.
3. The facility shall only operate during daylight hours, and shall not install lighting directed on the driving range, putting green(s) or sand trap areas.
4. The use of this driving range should be limited to no more than 40 tee boxes, unless parking over and above 42 spaces can be documented to the Division of Traffic Engineering, and the design of that parking approved by that division.
5. Storm water management shall be provided in accordance with the requirements of the adopted Engineering Manuals, or as otherwise deemed acceptable by the Division of Engineering based on any prior permitting.
6. Sewage treatment shall be provided in accordance with the requirements of the Board of Health.
7. The existing 4' by 8' free-standing sign shall not be enlarged for use by this facility, and shall not be relocated closer than 25' to the right-of-way fence.

8. Only incidental retail sales and rentals are allowed at the pro shop, for items such as golf balls, golf clubs, golf gloves and tees.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. George Crawley, appellant, was present, along with Mr. John Hadlock, owner of the property. Both Mr. Crawley and Mr. Hadlock indicated that they had reviewed the conditions and agreed to abide by them.

Ms. Meyer asked if there had been any complaints about the subject property. Mr. Hume responded no, nothing that hasn't been resolved.

Mr. Griggs noted that Mr. Hadlock had been before the Board previously regarding a signage issue for the garden center located on this property. He asked if that issue had been resolved, to which Mr. Hadlock responded that it had. Mr. Griggs called attention to the fact that there is a permitting process if the applicant is considering changing the existing sign. Mr. Hadlock stated that the existing sign and name ("Tee It Up") would remain the same, which everyone was familiar with, after being at this location for 23 years. Mr. Griggs wished them good luck.

Action – A motion was made by Mr. Griggs, seconded by Ms. White, and carried unanimously (Stumbo, Glover absent) to approve **C-2011-17: GEORGE P. CRAWLEY** (a conditional use permit to allow continued operation of a golf driving range under new management in the Agricultural-Rural [A-R] zone on property located at 4400/4440 Athens-Boonesboro Road) based on the staff's recommendation and subject to the eight conditions.

In response to the Chairman, Mr. Marx stated that each of the three following cases had a condition imposed by the Board upon approval for a review of the use; and in all three cases, it was to be an informal review consisting of a report from Building Inspection.

Chairman Stout asked Building Inspection if there were any comments they wished to make regarding the uses under review. Mr. Hume responded that, in all three instances, they were in compliance and well managed.

Chairman Stout then asked counsel whether any action needed to be taken with regard to the satisfactory review(s). Ms. Boland answered that it would probably be helpful to make a motion to the effect that the condition for a review has been satisfied, and it is found that they are in compliance with all conditions.

Since there were no questions from the Board, the Chairman called for a motion. It was determined that a separate motion would be made for each case, to make the minutes clear.

- f. **C-2007-101: MISSION LEXINGTON** - a review of a conditional use permit granted to establish a medical clinic in a Planned Neighborhood Residential (R-3) zone, on property located at 1321 Trent Boulevard. (Council District 8)

The Board approved a conditional use permit for a medical clinic in December of 2007. A condition was imposed, requiring a review after issuance of the Certificate of Occupancy, to determine if there have been any negative impacts on surrounding properties as a result of the use. The conditions imposed by the Board are as follows:

1. The free medical clinic shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the clinic.
3. The on-street parking conditions near the corner of Trent Boulevard and River Park Drive shall be monitored by the appellant, in conjunction with the Division of Traffic Engineering, to determine if any restricted parking arrangement is warranted in that area. If restricted parking is needed for safety purposes, as determined by the Division of Traffic Engineering, the appellant shall actively pursue such restrictions.

4. Parking shall be on the Mission site, and not on Trent Boulevard or River Park Drive.
5. The Mission shall be subject to a one-time review six (6) months after the Certificate of Occupancy.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Stumbo, Glover absent) to accept that this review has been satisfied and there were no complaints found for the property located at 1321 Trent Boulevard.

- g. **C-2009-49: RAY and KELLY VAN METRE / MONKEY JOE's** - a review of a conditional use permit granted to establish a children's entertainment center in a Light Industrial (I-1) zone, on property located at 1850 Bryant Road. (Council District 6)

The Board approved a conditional use permit for a children's entertainment center in August of 2009, imposing five conditions. One of the conditions required a review to determine if on-site off-street parking has been adequate for the use. The conditions imposed by the Board are as follows:

1. The facility shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to opening the facility, including an occupancy permit.
3. A sewer capacity study shall be undertaken during the permitting process should a determination be made by the Division of Engineering that such a study is necessary.
4. The facility shall be limited to a maximum occupancy of 250 persons, or as further limited by the Fire Marshall and/or the results of any applicable sewer capacity study.
5. The operation of the facility shall be reviewed by the Board one year from the date an occupancy permit is issued by the Division of Building Inspection to determine if off-street parking provided on site is adequate. Should a determination be made that such parking is inadequate; a specified number of additional off-street parking spaces shall be provided within a reasonable time frame, either through the construction of additional paved areas or by rearranging the layout of parking spaces in existing paved areas. Should such additional parking not be provided, the Board shall have the option of further limiting the maximum occupancy of the subject suite within the building.

Ms. Meyer asked whether the on-site off-street parking was adequate for the operation of this use. Mr. Hume responded that it was.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously (Stumbo, Glover absent) to accept that the review of this conditional use permit has been satisfied, and that the applicant is in compliance with all of the conditions placed on it at the time of approval.

- h. **C-2010-85: S & M PAWNSHOP, INC.** - a review of a conditional use permit granted to establish a pawnshop in a Highway Service Business (B-3) zone, on property located at 285 E. New Circle Road. (Council District 6)

The Board of Adjustment approved a conditional use permit for a pawn shop at this location in September of 2010, imposing several conditions. One of the conditions required a review to determine if there have been any negative impacts to surrounding properties related to the use. The conditions imposed by the Board are as follows:

1. The pawnshop shall be established in accordance with the submitted application and a revised site plan indicating (a) the closure of the two access points closest to the street intersection, and (b) the provision of a continuous landscape buffer of at least 150' in length that wraps around the curved corner of the intersection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction and/or renovation, and prior to opening the pawnshop.
3. The two access points closest to the intersection of Bryan Station Road and East New Circle Road shall be closed in accordance with the requirements of the Kentucky Transportation Cabinet.
4. A landscape buffer, as required for a vehicular use area pursuant to Article 18-3(a)(2)2 of the Zoning Ordinance, shall be provided for a minimum of 150' in length at the curved corner of the street intersection, subject to approval by the Landscape Examiner with the Division of

- Building Inspection. That buffer, to consist of tree and shrub plantings only and no fence or wall, shall include the area encompassed by the two access points that are to be closed.
5. Any pawned vehicles shall be stored off site at a location approved for such a use, subject to verification by the Division of Building Inspection.
  6. This approval shall become null and void should the appellant no longer own or occupy this business on the subject property.
  7. The Board shall provide a review of this use in 6 months.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs, and carried unanimously (Stumbo, Glover absent) to accept that the Board finds C-2010-85: S & M PAWNSHOP, INC. has satisfied the requirement that it be reviewed and the review was positive.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2011-23: LEXINGTON LAND COMPANY, LLC** - appeals for a variance to increase the maximum allowable floor area ratio from .35 to .50 for conversion of a multi-family building into a duplex and construction of an addition in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 331 Aylesford Place. (Council District 3)

The Staff Recommends: Postponement, for the following reasons:

- a. Additional details are needed regarding the location and extent of the expansion that is proposed as part of the conversion of the multi-family building on the subject property into a duplex.
- b. Information is needed pertaining to the number of bedrooms and number of occupants in the 4-unit building, and how that arrangement will change if the building is converted into only two dwelling units (a duplex).

Chairman Stout noted the staff's recommendation for postponement of this variance request, but the applicant's attorney requested that the case be heard presently.

Representation – Mr. Richard Murphy, attorney, was present representing Mr. Craig Hardin, owner of the Lexington Land Company. He stated that they were requesting a variance in the floor area ratio for what theoretically will be a duplex in the R-3 zone. He said the circumstances are that Mr. Hardin bought this property two or three months ago, and the building is in disrepair and needs a great deal of remodeling/reworking, particularly the kitchen and bathroom facilities. It was noted that Mr. Hardin has been approved by the Board of Architectural Review (BOAR) for an addition at the rear of the building that will replace the existing addition (the purpose of which is to accommodate new kitchen and bathroom facilities). The number of units in the structure, which was difficult to determine and thought to be between 4 and 6 units (with 11 bedrooms), will be reduced to two. A photo was shown of the 2½-story building located at 331 Aylesford Place, which was built in 1908 and has been used for rental purposes for a number of years. According to the 1934 Sanborn maps, this building was listed as a fraternity house. Mr. Murphy reiterated that the current owner, Mr. Hardin, wants to convert this multi-family structure into a duplex with the first floor as one unit, and the second/third floors as one unit. A photo was shown of the gray and white addition at the rear of the building, which will be replaced by a slightly larger addition. A



deck will be added to the right side, allowing another entrance point to the second floor. It was noted that the BOAR approved changes on the first and second floors of the building, but not the third floor. A photo was shown of the well-kept condition of the house across the street, which the appellant also owns.

Mr. Murphy stated that the floor area ratio in the R-3 zone is .5, and the size of this lot is 7,500 square feet. Under a floor area ratio of .5, a building containing up to 3,750 square feet can be put on the property. He said this can be done on one floor or four floors, for example, as long as the total square footage doesn't exceed 3,750 square feet. The building on this property is 3,298 square feet (excluding the basement), or just under .44 floor area ratio. The proposed addition will be approximately 400 square feet, bringing the floor area ratio to .49. Mr. Murphy explained that it wouldn't be necessary to come to the Board if they were keeping 3, 4 or 5 units in the building, which would be considered a multi-family dwelling, with a floor area ratio of .5 in an R-3 zone. He said, considering the reduction in the number of units in the building to two, there is a section in the Ordinance regarding the R-3 zone that says if you want to build a duplex in the R-3 zone, you go by the lot requirements for R-2. The floor area ratio for a duplex in the R-2 zone (in the Infill area) is .35, which this building exceeds. Mr. Murphy said this case was unusual; and that there were very few cases where landowners came to the Board wanting to reduce the number of units in a building. After having discussed this issue with the Law Department, Mr. Murphy noted a provision in the R-1 and R-2 sections of the Ordinance where the Board had the ability to grant a variance in floor area ratio, which the appellant would be allowed to request. He directed the Board's attention to the overheard which showed: the lot size @ 7,500 square feet and the size of the existing building (excluding the basement) @ 3,298 square feet, for a floor area ratio of .4397. The demolition or removal of 168 square feet plus the new construction of 578 square feet will total 3,708 square feet, or the proposed floor area ratio of .4944. Mr. Murphy noted that one available option to the appellant was to refurbish the building and retain the number of existing units, without having to come to the Board.

Chairman Stout asked how many units there are in the building. Mr. Murphy responded that it was hard to tell, but he estimated between 5 and 7 units. He said there was a basement unit that will not be used. For illustration, a usage chart of the building at 331 Aylesford was displayed, as follows:

Basement – 1 unit / 3 bedrooms (existing); no units or bedrooms proposed
First Floor – 1 unit / 3 bedrooms (existing); 1 unit / 3 bedrooms proposed
Second Floor – 2 to 4 units / 4 bedrooms (existing); 1 unit / 3 bedrooms proposed
Third Floor – 1 unit / 2 bedrooms (existing); 2 bedrooms proposed
<b>Total – 5 to 7 units / 10 bedrooms (existing); 2 units / 8 bedrooms proposed</b>

Mr. Griggs asked about the number of bathrooms and kitchens in the building. Mr. Murphy responded that there were a lot of kitchens. Mr. Griggs said it was hard for him to imagine having a separate unit without a bathroom. Mr. Murphy tried to explain the makeshift layout of the building, noting one example of two bedrooms (secured with locks on the doors) that shared a bathroom on the second floor. After conferring with Mr. Hardin, Mr. Murphy responded that there are five bathrooms. Mr. Griggs then asked about the parking situation. Mr. Murphy said there is a parking lot behind the building, and this should not be an issue since they are decreasing the number of units on the site.

Continuing, Mr. Murphy said the appellant felt the proposed conversion and renovation was the best solution for the building; and the variance would allow the conversion of this multi-family building into a duplex. He reiterated that the BOAR had approved the exterior changes; and they were fully aware of having to comply with the building and fire code regulations.

Chairman Stout asked about the reason(s) for the staff's recommendation of postponement. Mr. Marx responded that the main reason the staff recommended postponement was because none of the information Mr. Murphy presented to the Board was available at the time the staff report was finalized. Chairman Stout then asked what the staff's opinion was after hearing the information that was provided. Mr. Marx related the staff's concern that, even though the number of units would be reduced, they wanted to know more about the number of bedrooms and the number of occupants in order to make a better determination of whether there would be a more intense use of the property, which is a sensitive issue in a rental area with students. He said one of the things that struck the staff was the proposed five bedrooms in one unit, which might be an issue.

Mr. Sallee stated that the restrictions for dwelling units were changed a little over a year ago; and it now

restricts the number of unrelated persons that can live in a dwelling unit, which generally is 4, unless documentation shows more than that for a preceding period of time. He said having a unit with 5 bedrooms is inconsistent with those changes to the definition, which is the reason the staff recommended postponement, to get additional information for assessment.

Chairman Stout asked, if this were considered with a condition relative to the use of the building and the individuals living in each one of the units, how that would relate to the applicant's request. Mr. Sallee said the staff had not talked about whether there could be a condition on the number of occupants; and that Ms. Boland might be able to answer whether the Board could condition this variance with that type of restriction.

Ms. Boland responded that she would be very concerned about imposing such a condition because the Ordinance now limits unrelated persons considered to be a family unit to no more than 4 persons; and she didn't think it would be reasonable to put any greater restriction on it. She reiterated that she wouldn't be comfortable with the Board limiting the occupancy beyond what the Zoning Ordinance already sets.

Chairman Stout asked for comment from Building Inspection. Mr. Hume spoke in support of the proposal. He said anytime a building like this can be improved, Building Inspection is in favor of it; and if the basement bedrooms can be eliminated, it is a plus for them. Mr. Hume stated that Mr. Hardin has always worked well with Building Inspection; and that he understood the building code and the Zoning Ordinance pretty well.

Chairman Stout then asked Mr. Murphy about his client's plans for occupancy of the dwelling. Mr. Murphy related his observation that the whole street is a mixture of students and what appeared to be older, single people living in apartments. He acknowledged that Mr. Hardin does rent to students; and that students are a strong possibility for living in this building. Mr. Murphy went on to say that since this building is convenient to the University of KY, it is an attractive place for students; however, it is not restricted to students only. Chairman Stout commented that he didn't have a problem with the applicant's proposal for a duplex; but he did have some concern about the possibility of renting out the proposed 8 bedrooms to more than 8 people. Mr. Hardin responded that the market demand drives what is available; and it was well known that he has rented to students for more than 25 years. Mr. Hardin said he has been an active participant in programs in the community such as the Town and Gown Commission, and the Student Housing Task Force Committee; and that one of the things they have worked hard to do is to become more responsible for and to control the behavior of people, which is one of the reasons Mr. Hardin gave for coming to the Board. He felt it would be easier to control who lives at this property with a moderate expansion to get better bathrooms and kitchens, a nicer clientele and parents' signatures. Mr. Hardin said they typically would do no more than one person per bedroom; but he preferred not to be restricted to that in the event that someone wanted to share a bedroom.

For clarification, Chairman Stout asked whether the bedroom situation in the basement would be eliminated. Mr. Hardin responded affirmatively, noting that there actually are two bedrooms without proper fire egress that probably were put in in the 1940s. He said this area could possibly be used for storage purposes after the renovation.

Chairman Stout asked if the staff's opinion was changed by the additional information regarding this proposal. Mr. Sallee responded that the staff still had concerns about having one dwelling unit with 5 bedrooms in it and the occupants being unrelated, which didn't seem consistent with the new zoning definition.

In response, Mr. Murphy said the issue before the Board was not the number of bedrooms, which they knew they would have to work out with Building Inspection in light of the new ordinance, but rather the floor area ratio on this property. He pointed out that they probably have a 10-bedroom nonconforming boarding house that will be brought closer into conformity by doing this, which they would talk to Building Inspection and the Law Department about during the permitting process, including determining the number of bedrooms. He said if the Board grants the variance, it keeps open the possibility of having two units instead of three or four.

Mr. Griggs disagreed with the statement that this is a nonconforming 10-bedroom boarding house. Instead, it was his opinion that it is an illegal 10-bedroom house of some kind, because the bedrooms in the basement were not nonconforming, but were illegal. Mr. Murphy responded that there are two different

ways of looking at this. From the zoning standpoint, there is the question of whether these units were put in prior to the Zoning Ordinance, which (now) would prohibit this. He reiterated that the house was built before zoning existed in Lexington, and it has been a fraternity house as well. As to whether or not these are legal, fire code units, Mr. Murphy said they had not asked for an opinion from anyone, but he suspected these are not legal fire conforming units.

Chairman Stout asked the staff about the request to change the floor area ratio. Mr. Sallee said the staff understood Mr. Murphy's legal argument after his discussion with the Law Department, but they were hesitant to recommend this variance without further information because of the concern about the number of bedrooms in each unit. He said staff did converse with Ms. Boland about whether or not there were any nonconformities on the property, in which case there may have been an avenue for the Board to address a "change in a nonconforming" situation to a less nonconforming situation. However, to the staff's understanding, there were none associated with the property. Chairman Stout said it seemed the staff was holding true to the recommendation that this case should be postponed until it was further investigated.

Mr. Glover related his understanding that if the applicant's plan was to have (separate) units on the first, second and third floors, for a total of three units instead of two, it would be in compliance with R-3 and they wouldn't have to come before the Board. Mr. Murphy responded that was correct. He went on to say that if they were somehow able to come up with three units, it wouldn't be necessary to come to the Board because they would have the .5 floor area ratio with the three or more units. A brief discussion followed.

In response to Ms. Moore's request for comment, Mr. Hume spoke in full support of the proposed renovation/construction project. He said anytime a major renovation like this is done, a lot of life safety items will be improved. In point, he referred to a photo shown earlier of the exterior fire escape outside the dormer of the third floor unit. Mr. Hume noted that the existing structure could be repaired, patched, painted and made available for people to move in without the Board hearing a word about it. He said, from Building Inspection's perspective, that this will be a great improvement in terms of fire safety, occupant load and parking.

Chairman Stout was inclined to support the variance that would allow a safer, renovated two-unit structure instead of what exists on the property now. He spoke about the unsafe situation in the basement, which has no fire egress for the two bedrooms, as well as the third floor unit. He said he didn't see a major issue with this request.

Mr. Glover disclosed that he knew Mr. Hardin after having represented him several years ago.

Since there were no further questions or discussion, Ms. Meyer said the Board was ready to make a motion.

**Action** – A motion was made by Ms. Meyer to approve **V-2011-23: LEXINGTON LAND COMPANY, LLC** (a variance to increase the maximum allowable floor area ratio from .35 to .50 for conversion of a multi-family building into a duplex and construction of an addition in a Planned Neighborhood Residential/Historic District Overlay [R-3/H-1] zone on property located at 331 Aylesford Place) based on the following submitted findings and subject to four conditions:

#### **FINDINGS FOR APPROVAL**

1. Granting this variance will not negatively affect the public health, safety or welfare, nor alter the character of the general vicinity, and will not cause a hazard or nuisance to the public because this is an existing structure and the applicant wishes to renovate the building and reduce the number of dwelling units from four to two.
2. The special circumstances which apply to this property and which do not generally apply to land in the general vicinity or in the same zone are that the applicant is attempting to repair and improve the house, which will be a benefit to the neighborhood; and it would be appropriate to have two units in the building, rather than the current four.
3. Strict application of the Zoning Ordinance would deprive the applicant of a reasonable use of its land or create an unnecessary hardship, because strict interpretation would require the applicant to either keep three or more units in the building, or to close off part of the structure from habitation.
4. The circumstances of this requested variance are not the result of the applicant's actions since the

adoption of the zoning regulation. The house existed and was above the 0.35 floor area ratio when the applicant purchased the house.

### **CONDITIONS**

1. Construction of the proposed addition shall limit square footage to a maximum of 3,708 square feet for the entire structure.
2. All required permits shall be obtained prior to starting construction.
3. Occupancy shall be in compliance with all applicable provisions of the Zoning Ordinance, including the current definition of "family", building code and all relevant fire code regulations.
4. Any alterations to the structure shall comply with any necessary Certificates of Appropriateness from the BOAR.

Ms. Boland noted that, in discussions with Building Inspection, they wanted clarification regarding the 3,708 square feet to make sure it did not include things like decks, which does not count for the floor area ratio. Mr. Dillon said they just wanted to make sure the floor area ratio is 3,708, but the square footage of the building and decks, etc. may exceed that. Mr. Griggs noted that the floor area ratio is .49, but the square footage of the floor area on the ground is 3,708. Ms. Boland suggested the wording 3,708 with respect to the square footage that counts toward floor area ratio. In response to Ms. Boland, Mr. Murphy stated that the 3,708 was the square footage not counting the basement, decks and things that would not be counted under the ordinance. Ms. Boland then suggested adding the following phrase to Condition #1: "3,708 square feet with respect to the calculation of floor area ratio." She said this would make it clear to Building Inspection since there is no actual site plan that limits the applicant to what was presented to the Board today.

Mr. Murphy asked for clarification regarding compliance with all zoning ordinances, including the definition of "family". He said he assumed the Board was not saying they could not have 5 bedrooms in the unit on the second floor, but that they would have to talk to the Law Department and staff in order to work that out.

Chairman Stout asked if Mr. Murphy was in agreement with the findings and conditions for approval; and whether he understood that they would have to work with staff and Building Inspection. Mr. Murphy responded affirmatively.

Ms. Meyer inquired whether the Board would need to address the basement situation, or if that would be done through Building Inspection. Mr. Hume said it was evident that this is not an occupiable space with regard to those bedrooms; but that it was up to the Board as to whether they wanted to impose a condition that the basement cannot be used other than for mechanical purposes or storage. He reiterated that the basement, as is, obviously cannot be occupied as a dwelling unit because of the lack of egress. Mr. Griggs said if they were removing the bedrooms down there, he didn't want to curtail the use of the space for storage or mechanical purposes.

The pending motion for approval of the variance was seconded and carried unanimously (Stumbo absent).

#### **D. Conditional Use Appeals**

None Remaining

#### **E. Administrative Review**

None Remaining

#### **IV. BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time.

Mr. Griggs revisited the issue of possibly revising the By-Laws to establish guidelines/requirements related to streamlining cases, with respect to speaker time limits. Ms. Boland responded that she would be prepared to discuss this matter at next month's meeting.

- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time. There were none.
- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date will be April 29, 2011.
- VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 2:10 p.m.

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Louis Stout, Chairman

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James Griggs, Secretary